

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Bru-Mar Homes, Inc. : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation :
Franchise Tax under Article 9A & 27 of the Tax :
Law for the Year 1980. :

State of New York }
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 15th day of June, 1984, he served the within notice of Decision by certified mail upon Bru-Mar Homes, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bru-Mar Homes, Inc.
1726 Long Pond Rd.
Rochester, NY 14606

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
15th day of June, 1984.

David Parchuck

Conrad A. Hagelund
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Bru-Mar Homes, Inc. : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
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Franchise Tax under Article 9A & 27 of the Tax :
Law for the Year 1980. :

State of New York }
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 15th day of June, 1984, he served the within notice of Decision by certified mail upon R. J. Passero, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

R. J. Passero
R. J. Passero, Public Accountant
2701 Culver Rd.
Rochester, NY 14622

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
15th day of June, 1984.

David Parchuck

James A. Hapgood
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

June 15, 1984

Bru-Mar Homes, Inc.
1726 Long Pond Rd.
Rochester, NY 14606

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
R. J. Passero
R. J. Passero, Public Accountant
2701 Culver Rd.
Rochester, NY 14622
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
BRU-MAR HOMES, INC.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Articles 9-A and 27 of the Tax Law for the	:	
Year 1980.	:	

Petitioner, Bru-Mar Homes, Inc., 1726 Long Pond Road, Rochester, New York 14606, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Articles 9-A and 27 of the Tax Law for the year 1980 (File No. 36498).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on March 14, 1984 at 10:45 A.M. Petitioner appeared by R.J. Passero, P.A. The Audit Division appeared by John P. Dugan, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether petitioner filed its returns and paid its corporation franchise tax late for the year 1980 thereby subjecting it to penalties under section 1085(a) of the Tax Law.

FINDINGS OF FACT

1. On or about July 17, 1981, petitioner, Bru-Mar Homes, Inc., filed its Corporation Franchise Tax Report for calendar year 1980. On said return, petitioner reported \$2,000.00 in prepayments of 1980 tax.

2. On or about March 16, 1981, petitioner had timely filed an Application for Three Month Extension for Filing Tax Report for 1980. On the application petitioner allocated \$1,600.00 of the \$2,000.00 in prepayments to estimated tax for 1980 and the remaining \$400.00 to the first installment for tax year 1981. For tax year 1979 petitioner had filed a return and paid tax in the amount of \$1,991.00. Petitioner's return for tax year 1980 showed a tax for said year of \$8,058.00.

3. On August 19, 1981, the Audit Division issued a Notice and Demand for Payment of Corporation Tax Due against petitioner in the amount of \$186.51 in interest and \$645.80 in penalty for a total due of \$832.31 for the year ended December 31, 1980. The notice explained that penalty was being imposed for late filing pursuant to section 1085 of the Tax Law and that any payments had been reduced by a 25 percent mandatory installment for the following tax year. At the hearing, the Audit Division asserted an increase in the penalty to \$1,614.50.

4. The Audit Division's position is that, since petitioner's prepayments for 1980, after reducing the prepayment by the 25 percent installment for 1981 tax, did not equal the preceding year's tax of \$1,991.00 or 90 percent of the actual 1980 tax, petitioner's application for extension was invalid and its filing in July was late. The increase in penalty asserted at the hearing was based on the fact that the return was due on March 16, 1981 and, due to the invalid extension application, the July 17, 1981 filing was five months late rather than two months late as originally computed.

5. Petitioner argues that there was no way of knowing at the time of the application for extension that the actual tax for 1980 would be so much higher than in 1979. Petitioner also maintains that it could have allocated the

entire \$2,000.00 to 1980 taxes which would have equaled the 1979 tax; however, in so allocating, petitioner would not have complied with the 25 percent mandatory installment requirement for 1981 taxes. Petitioner also filed a timely second Federal extension application which, petitioner argues should also be valid for New York purposes thus making its July 17, 1981 filing timely. The Audit Division argues that Federal applications for extension of corporation taxes are never valid for New York purposes.

CONCLUSIONS OF LAW

A. That section 211.1 of the Tax Law provides in part, that:

"[a]n automatic extension of three months for the filing of its annual report shall be allowed any taxpayer if, within the time prescribed by the preceding paragraph, such taxpayer files with the tax commission an application for extension in such form as said commission may prescribe by regulation and pays on or before the date of such filing the amount properly estimated as its tax."

The amount of tax paid is deemed to be properly estimated if it is either not less than 90 percent of the actual tax liability or not less than the preceding taxable year's tax if the preceding year was a twelve month taxable year (Tax Law §213.1; 20 NYCRR 7-1.3).

B. That every taxpayer subject to the tax imposed by Article 9-A must pay with its report required for the preceding taxable year, or with an application for extension of the time for filing such report, an amount equal to 25 percent of the preceding year's tax, if such tax exceeded one thousand dollars, as a first installment payment for the account of the following period (Tax Law §213-b(a); 20 NYCRR 7-3.3).

C. That in order for there to be a valid application for extension for filing a corporation tax report, the properly estimated tax must be paid and a

first installment payment for the account of the following period must also be made. Petitioner was required to make a minimum payment of \$2,488.75 (\$1,991.00 based on the preceding year's tax plus \$497.75 for the 25 percent installment on the following year's tax) for its application for extension to be valid. Since petitioner's prepayments amounted to only \$2,000.00 its application was invalid.

D. That, during the year in issue, under the Personal Income Tax Law express provision was made for a Federal extension of time to file to be valid for New York purposes under certain circumstances (Tax Law §657(a); 20 NYCRR 151.2). There was, however, no such provision made under the Corporation Franchise Tax Law or regulations and, as a result, a valid Federal extension is not valid for New York purposes. It should be noted that even if petitioner had timely filed for a second New York extension such application would have been invalid since petitioner had no valid first extension.

E. That section 1085(a)(1) of the Tax Law provides for a penalty for failure to file a timely return, not due to reasonable cause, of five percent of the tax due for each month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate. Inasmuch as petitioner's return for 1980 was due on March 16, 1981 and was filed on July 17, 1981 with no valid extension, the Audit Division has successfully demonstrated that the 1085(a)(1) penalty should have been imposed for five months resulting in a penalty of \$1,614.50 as asserted at the hearing.

F. That the petition of Bru-Mar Homes, Inc. is denied and the Notice and Demand for Payment of Corporation Tax Due issued August 19, 1981 and modified in Conclusion of Law "E" is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 15 1984


PRESIDENT


COMMISSIONER


COMMISSIONER